

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

JOINT APPROPRIATIONS SUBCOMMITTEE ON HEALTH AND HUMAN SERVICES

Call to Order: By **CHAIRMAN EDITH CLARK**, on February 11, 2003 at 8:00 A.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Edith Clark, Chairman (R)
Sen. John Cobb, Vice Chairman (R)
Rep. Dick Haines (R)
Rep. Joey Jayne (D)
Sen. Bob Keenan (R)
Sen. Emily Stonington (D)

Members Excused: None.

Members Absent: None.

Staff Present: Robert V. Andersen, OBPP
Pat Gervais, Legislative Branch
Lois Steinbeck, Legislative Branch
Sydney Taber, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed. The time stamp refers to material below it.

Committee Business Summary:

Hearing & Date Posted: Disability Services Eligibility

Executive Action: Human and Community Services
Division
Operations Technology Division

EXECUTIVE ACTION ON HUMAN AND COMMUNITY SERVICES DIVISION

Present Law Adjustments

{Tape: 1; Side: A; Approx. Time Counter: 2.3 - 4.2}

Pat Gervais, Legislative Fiscal Division (LFD), referred to the Budget Analysis and explained that in Decision Package (DP) 2 there are general fund reductions in the general fund available for childcare match, and there is an increase in federal funds. The \$3 million taken from Employment Security Act (ESA) will provide enough matching funds to cover the increased federal funds.

{Tape: 1; Side: A; Approx. Time Counter: 4.2 - 10.3}

Motion: REP. CLARK moved TO ADOPT DP 2, ECSB ADMIN AND SUBSIDY CASELOAD ADJUSTMENTS.

Discussion:

There was discussion that the ESA money has been taken so the Subcommittee does not have that money, and **Ms. Gervais** suggested that they could wait on the DP or adopt only federal funds and return later to address the general fund. She continued that the Subcommittee must find a way to match \$1.8 million of the \$3.8 million federal funds in the DP. Of the almost \$8 million of federal funds included in the decision package, \$6 million requires no general fund match, and \$1.8 million does require general fund match. The general match for the \$1.8 million is about \$400,000.

CHAIRMAN CLARK withdrew her motion and suggested that they defer DP 2 until there is a source of funding.

{Tape: 1; Side: A; Approx. Time Counter: 10.3 - 15.9}

Motion: SEN. COBB moved TO ADOPT DP 3, ELIMINATION OF TANF FAIM PHASE II R.

Discussion:

Ms. Gervais explained that in the base year there are more federal Temporary Assistance to Needy Families (TANF) funds because there were more carryover funds available than the Department will be able to realize in TANF funds in the future biennium. This decision package reduces the budget by the amount spent on Families Achieving Independence in Montana (FAIM) Phase II R in the base year of federal funds. **REP. JAYNE** asked if there is any money left and how much it would be. **Hank Hudson, Administrator of Human and Community Services Division (HCSO)**, explained that contractors have to the end of the biennium to

spend down the money. If for some reason the money was not spent, it would go into TANF cash benefit.

{Tape: 1; Side: A; Approx. Time Counter: 15.8 - 16}

Vote: Motion carried 6-0 on a voice vote.

{Tape: 1; Side: A; Approx. Time Counter: 16 - 22.6}

Motion: SEN. COBB moved TO ADOPT DP 4.

Discussion:

It was agreed that they would do a package motion including DP 4, 6, 8, 10, 11, 12, 14, and 15. **Ms. Gervais** reviewed each of the DPs and answered Subcommittee questions. She expanded on her explanation of DP 10, explaining that the actual cost of implementing the Electronic Benefits Transfer (EBT) was close to \$375,000, but during the biennium, the Department implemented reductions in cost of \$350,000 biennially. This DP annualizes spending reductions implemented in FY03 and offsets them against the requested general fund increase. It was suggested that **SEN. KEENAN** make a package motion.

{Tape: 1; Side: A; Approx. Time Counter: 22.6 - 34.5}

Motion: SEN. KEENAN moved TO ADOPT DP 4, 6, 8, 10, 11, and 12.

Discussion:

There was an implied withdrawal of the motion by **SEN. COBB**. Responding to a question from **SEN. STONINGTON** regarding DP 8, **Ms. Gervais** said that it is a movement of additional federal TANF funds and is a projected caseload increase in cash assistance benefits. The increase in TANF funds is budgeted specifically for cash assistance benefits. **SEN. STONINGTON** then asked **Mr. Hudson** to explain what had happened to the TANF savings. **Mr. Hudson** replied that in addition to paying the cash benefits, they provided 30 hours a week of employment and training services to people and rolled into those costs are case management services. Unlike most states which have a set amount that they will pay, Montana has indexed its benefit payment to 40.5 percent of federal poverty. These poverty rates have inflated every year since 1994. The State has also increased benefits to relatives who are raising children from TANF eligible families.

Continuing the discussion, **SEN. COBB** said that if the legislature funded childcare, the caseloads should go down, and the reserve should go up. **Mr. Hudson** explained that some people go on cash benefits because they can't afford to go on the waiting list. If they fully funded childcare, then perhaps this would be the case.

Responding to more questions regarding decision packages, **Mr. Hudson** said that the food stamp training program had been one of the more effective training programs, but that they could meet federal requirements without it.

{Tape: 1; Side: A; Approx. Time Counter: 34.5 - 48.5}

SEN. STONINGTON referred to testimony from February 10, and asked what the process would be if they were to add a trigger to reductions in benefits. **Mr. Hudson** explained that reductions in benefits can be made without legislative involvement, and that it would be a decision made at the Director and Deputy Director level. They would review the projections, the risk of having to make bigger cuts as caseload goes down, and earlier reductions in benefits. HCSD does not use economic indicators in its projections, rather it uses the history of the past two years. Responding to a question from **SEN. STONINGTON**, **Mr. Hudson** said that they will not make changes until there is federal action on this. He added that if the economy improves and caseloads drop, HCSD has been directed by the advisory council to put \$4 million aside for use in TANF programs should there be an economic downturn and to use the remainder for childcare and other support services. **SEN. STONINGTON** requested something written from the Department that this is what they would do. **Director Gray** asked whether she wanted this as a statement of intent or as language, and she said that she would like it to be language in HB 2.

{Tape: 1; Side: B; Approx. Time Counter: 0.3 - 4.2}

Continuing discussion on the motion decision packages, **Mr. Hudson** responded to a series of questions from **REP. JAYNE** regarding the change in federal law. He said that contracts are finalized in July and that it is difficult to finalize those contracts when they do not know what the services will be. The contracts are, therefore, designed to meet the most strenuous contingency, such as including the 40-hour work week. If the federal law does not change, they will use the 30-hour work week. He added that federal law would probably supercede state law, and he did not think that signing the contract for a 30-hour work week would be the best idea if the federal law were changed to a 40-hour work requirement. There are significant penalties involved: a loss of block grant the following year and also a general fund maintenance of effort (MOE) increase.

{Tape: 1; Side: B; Approx. Time Counter: 4.2 - 4.6}

Vote: Motion carried 6-0 on a voice vote.

{Tape: 1; Side: B; Approx. Time Counter: 4.6 - 6.4}

In response to a question from **SEN. COBB** regarding the TANF bonus of \$2.2 million appropriated in the special session, **Mr. Hudson** said that the bonus money was used in supportive services and

childcare. **Mr. Hudson** then reiterated for **SEN. COBB** that the contracts will allow them to go to a 40-hour work commitment. The worst consequence of the 40-hour work week is that it takes childcare away from people who are working. They would not do this unless the federal government insisted.

There were no motions on DP 13, 14, and 15.

New Proposals

{Tape: 1; Side: B; Approx. Time Counter: 6.7 - 7}

Motion/Vote: **SEN. COBB** moved TO ADOPT DP 7, DOE WEATHERIZATION TRAINING GRANT. Motion carried 6-0 on a voice vote.

{Tape: 1; Side: B; Approx. Time Counter: 7 - 7.3}

Motion/Vote: **SEN. COBB** moved TO ADOPT DP 9, HOUSING OPPORTUNITIES FOR PEOPLE WITH AIDS. Motion carried 6-0 on a voice vote.

{Tape: 1; Side: B; Approx. Time Counter: 7.3 - 7.6}

Motion/Vote: **SEN. COBB** moved TO ADOPT DP 280, FTE REDUCTION. Motion carried 6-0 on a voice vote.

{Tape: 1; Side: B; Approx. Time Counter: 7.6 - 13.5}

There was discussion on including language to set benefit levels in HB 2. **Ms. Gervais** expressed concern about potential conflicts with substantive law since the Department already has statutory authority to do this. She added that she would work with the Department on development of language for the HB 2 narrative that specifies how decisions will be made regarding reductions in benefit levels.

{Tape: 1; Side: B; Approx. Time Counter: 13.5 - 25.6}

In a synopsis of the issue of childcare funding for the Subcommittee, **Ms. Gervais** said that revised information indicates that the Department will need \$2.8 million biennially to draw down all the available federal matching funds. In addition to this, there is a \$15 million biennial reduction in TANF funds transferred to childcare. There is a general fund gap of \$2.8 million for matching funds, plus \$15.2 million that was entirely federally funded in the current biennium. The \$2.8 million would allow the division to draw down about \$9 million in match. **Mr. Hudson** added that there is no expectation of a lot of federal money for childcare in the federal reauthorization law. There was further discussion of this issue. **Ms. Gervais** will work with the Department to prepare a spreadsheet which would summarize the information for wrap up.

{Tape: 1; Side: B; Approx. Time Counter: 25.6 - 37.1}

Referencing the balancing act between cash benefits and childcare subsidies, **SEN. STONINGTON** asked if they would help families more by childcare or providing cash assistance. **Mr. Hudson** replied that in the long run, it is better to design a program that encourages and supports work. In many ways, childcare is a better investment than cash benefits because it is consistent with the goal of the program in providing support to those who work. **SEN. STONINGTON** then asked for comment from Judy Smith of Women's Opportunity and Resource Development (WORD). **Ms. Smith** stated that she did not totally agree with Mr. Hudson, and added that she was hoping to avoid the conversation because they are both very important issues to her. She said that if families are homeless, childcare does not help them go to work. There are distinct populations on TANF that do not have the same needs, and they need to be looked at separately. She concluded that she is trying to find additional sources of revenue for programs so that this type of difficult choice will not have to be made.

{Tape: 1; Side: B; Approx. Time Counter: 37.1 - 48.5}

In discussion of language on the proposed TANF cash assistance benefit level of 30 percent of poverty level versus 40.5 percent, **Mr. Hudson** said that the rule process to change the language takes 90 days. If it looked like caseload was not going down and they did not have enough money to pay benefits at current caseload levels, they would pursue this rule change. After the rule is in effect, the next month people will receive a smaller benefits check. They looked at the 30 percent of poverty level because it generated about the amount of money they thought they would be short. There are many unknowns. It is a matter of managing within the set amount of money in the block grant.

EXECUTIVE ACTION ON OPERATIONS AND TECHNOLOGY DIVISION

{Tape: 2; Side: A; Approx. Time Counter: 0.4 - 5.4}

Motion/Vote: **SEN. COBB** moved TO ADOPT DP 77, 78, AND 81. Motion carried 6-0 on a voice vote.

HEARING ON DEVELOPMENTAL DISABILITY ELIGIBILITY

{Tape: 2; Side: A; Approx. Time Counter: 5.4 - 21.3}

Information was distributed to the Subcommittee: a spreadsheet on a comparison of eligibility for selected health services and programs within DPHHS, Montana Program statutes, a draft proposal for adult mental health services provided by Community Mental Health Centers (CMHC), proposed eligibility and funding requirements for Developmental Disabilities Services (DD), and a letter to President Bush and Secretary Thompson from the governors of Colorado, Connecticut, and Florida.

EXHIBIT (jhh30a01)

EXHIBIT (jhh30a02)

EXHIBIT (jhh30a03)

EXHIBIT (jhh30a04)

EXHIBIT (jhh30a05)

Referencing Exhibit 1, **Ms. Steinbeck** explained that the spreadsheet is a comparison of eligibility across several programs. In reviewing the Developmental Disabilities general fund, she noted that, unlike other programs, it has no federal mandate, no financial eligibility limit, no income limit, no resources or asset tests limit. Furthermore, the severity of disability is not as restrictive as in other programs, and there is no cost sharing. There was discussion about the design of the spreadsheet itself, and Subcommittee members suggested areas of improvement.

Responding to questions from **SEN. COBB**, **Ms. Steinbeck** said that too many changes in Medicaid eligibility could jeopardize the State's ability to receive the Children's Health Insurance Plan (CHIP) grant, so eligibility changes do have ripple effects.

{Tape: 2; Side: A; Approx. Time Counter: 25.8 - 28}

Joe Mathews, Administrator of the Disabilities Services Division (DSD), gave a brief introduction on the issues that they hoped to address and introduced **Jeff Sturm, Director of the Developmental Disabilities Program (DDP)**.

{Tape: 2; Side: A; Approx. Time Counter: 28 - 38}

Referring to Exhibit 4, **Mr. Sturm** reviewed development of a waiver amendment to get as many people as possible into the waiver. They have asked permission of the federal Medicaid program to remove the intensive definition for child services from the waiver. They are also looking into doing a waiver, which will allow other children and adults into the waiver. The division will always be bound by the requirement of the home and community-based waivers, that there be a need for Intermediate Care Facility for the Mentally Retarded (ICF/MR) level of care. The division is also considering a rewording of this waiver, which will move more people into the program. Federal Medicaid has approved addition of the phrase "to prevent or delay institutionalization". It is the hope that these efforts, will mean that there will be fewer people that are not Medicaid eligible.

{Tape: 2; Side: A; Approx. Time Counter: 34.8 - 48}

Responding to a Subcommittee question, **Mr. Sturm** reviewed waiver eligibility for Subcommittee members. An individual must: be Medicaid eligible, require ICF/MR level of care, be at risk of

institutionalization if waiver services were not available, and may not earn more than 50 percent of the average income. Those old rules for waiver eligibility will still apply; they will just change "the need for ICF/MR care" to "prevent and delay institutionalization."

Continuing with his explanation of the waiver changes, **Mr. Sturm** stated that about 2,000 individuals are currently in the waiver. If they can increase this by another thousand with the changes, then there will be another 1,000 people who would be funded through general fund. The division investigated how to apply income and clinical criteria to that group and came up with 200 percent of poverty as the income criteria. The people involved in this would be severely or profoundly retarded, exhibit maladaptive behaviors, and have medical and physical problems that require ongoing supervision and assistance. If there is general fund left after they match for those in waiver services, they would provide service to those with the most intensive needs first.

{Tape: 2; Side: B; Approx. Time Counter: 0.3 - 3.4}

Mr. Sturm continued that there are individuals that are on trust funds, some of which are Medicaid-eligible trusts and some are not. They would try to move as many people as possible into a Medicaid-eligible trusts. They are trying to make the Medicaid spend-down process go more smoothly, as well.

{Tape: 2; Side: B; Approx. Time Counter: 3.4 - 7.3}

Responding to Subcommittee questions, **Ms. Gervais** said that DD has very few limitations, and the Subcommittee requested input from the Department as to where they could tolerate limitations. The statute does not address this, so it would be the recommendation of staff that, should the Subcommittee wish the Department to implement something such as this, statutory changes be made to provide the Department rule-making authority and guidance with regard to the type of eligibility it should implement.

Ms. Gervais reviewed remaining issues in Disability Services Division. The reinvestment of refinancing dollars and use of eligibility criteria could limit the number of people served with general fund and the potential growth in the system. Issues for the Subcommittee to consider under the proposal prepared by the Department include: requiring people desiring services to apply for Medicaid; if consumers do not apply for Medicaid, they would not be eligible for services funded through the general fund; use of the intensity of the client's need to determine those eligible for general fund services; implementation of an income criteria

at 200 percent of poverty; and use of trusts or other resources to pay the recipients cost of care.

{Tape: 2; Side: B; Approx. Time Counter: 7.3 - 14}

SEN. COBB asked the Department if the waiver would cover the \$1.4 million per year cut out of the Executive Budget. **Mr. Mathews** replied that it would depend upon whether they would be allowed to refinance any of the money. If the money is taken away from them, there will be a hole in the budget. **SEN. COBB** said that they were going to use tobacco prevention money to fill the hole. He then suggested that if the Department could backfill itself, the Subcommittee would not have to deal with this, and it would free up \$1.4 million to be used somewhere else.

Ms. Gervais inserted that the LFD issue with regard to the reductions was that the Department indicated that it hoped to refinance and not implement those changes. The Subcommittee may wish to discuss what the Department should do with refinance money. The Subcommittee may wish to direct where it wants the Department to use the general fund. Options would be to use it elsewhere, continue at the existing level of service, or increase the number of people served.

Ms. Steinbeck reviewed Subcommittee history, stating that in 1995, there was a Medicaid eligibility rule for mental health services - colloquially called the "family of one" rule, which the Subcommittee eliminated. The equivalent of this rule is in operation in DD. This division is proposing in its eligibility determination to use costs incurred for certain items such as adaptive equipment, medical costs, and medical travel to determine eligibility.

{Tape: 2; Side: B; Approx. Time Counter: 14 - 20}

SEN. STONINGTON asked Wally Melcher to comment on this. **Wally Melcher, representing the Montana Association of Independent Disabilities Services**, said that there are a variety of needs within the category, and that many of them are fairly intensive. He added that someone with a developmental disability is, by definition, someone who had the onset of the disability early in life, and that the disability is lifelong and incurable. The disability will require support and resources throughout the individual's life and creates a substantial impediment to the individual's activities. **Mr. Melcher** reviewed the impact that this proposal would have on adults with developmental disabilities, and stressed his concern that the proposal has no respect for the level of disability, but is based on income rather than need. Responding to a question from **CHAIRMAN CLARK** regarding the level he would find fair, **Mr. Melcher** said that, except for extenuating circumstance, if it were based on monetary

gain from income and other resources, 200 percent would be as fair as any level. He added that the expenses in the medical area were his primary concern.

Ms. Steinbeck commented that the people **Mr. Melcher** had described should be eligible for Medicaid with a spend down. If they are profoundly disabled, they should meet the Social Security Insurance (SSI) criteria. If they have income in excess of Medicaid, they can spend down and be Medicaid eligible. In the last biennium, this Subcommittee required that no general fund would be spent for either CHIP-eligible children or Medicaid-eligible adults in mental health. In other programs in the Department, it has never been an issue that general fund would be expended for someone for a Medicaid-eligible services.

{Tape: 2; Side: B; Approx. Time Counter: 27.6 - 33.5}

Mr. Mathews explained that they are trying to do this from several angles and one is another demonstration waiver to target different groups of people to get as many on the waiver as possible. They intend to tie into a CHIP waiver to refinance the CHIP dollars for providing services for children. There needs to be a service delivery system for children that are not normally included in CHIP, such as family education and support. These services would help keep the families intact and the children receiving services at home. If the waivers are approved, the division will have a four-pronged approach in DD.

Ms. Gervais reviewed Department information on the income levels of recipients of services. She said that in other systems individuals must spend down their assets in order to be Medicaid-eligible. **Ms. Steinbeck** added that in other Medicaid systems, providers are expected to collect the copayment. She gave examples of other areas in which the DD program is not administered like other systems, and said that there are many areas of the DD system that are not administered like other systems in the Department.

{Tape: 2; Side: B; Approx. Time Counter: 36.7 - 48.5}

Director Gray said that children's and adults services in the DD are very different, and asked that they allow Chris Volinkety to address the children's issue. **Chris Volinkety, lobbyist for children's DD services in Regions IV and V**, said that she does not think having a child with disabilities is in any way related to poverty. She said DD children are very expensive and that families must be Medicaid-eligible or very wealthy to support them. She addressed the mental health copay and reviewed the provider responsibility in the system. **Ms. Volinety** said that in her program they try to keep children in the home because they will develop much farther and cost less. She stressed that she

has no problem with people being put on Medicaid waivers and trust funds being spent down, but she does have a problem with eligibility being set at 200 percent of poverty since many families and children will be put at risk.

{Tape: 3; Side: A; Approx. Time Counter: 0.3 - 5.8}

In continued discussion with Subcommittee members, **Ms. Volinkety** said that average medical costs for a DD child are \$5,700 per year, which puts many families under considerable financial stress. There was discussion of income exclusions for medical needs, and **Ms. Volinkety** said that she could not support such a measure. There was then discussion on the reasons why someone would not apply for Medicaid. **Ms. Steinbeck** addressed this saying that research indicates that people consider there is a stigma attached to being associated with Medicaid, and there may also be privacy issues.

{Tape: 3; Side: A; Approx. Time Counter: 5.8 - 9.7}

Mr. Sturm observed that being Medicaid-waiver eligible and Medicaid-eligible are not the same thing. **Ms. Gervais** said that if a person has a Medicaid card and is not Medicaid-waiver eligible, then they are not meeting the level of care requirement for the waiver. Level of care has been used in several systems in the Department to determine eligibility for services. In other services systems, general fund services are not provided for those at a lower level of care.

{Tape: 3; Side: A; Approx. Time Counter: 9.7 - 11.4}

Mr. Mathews addressed the problems that they are currently having with Medicaid eligibility at the Montana Developmental Center (MDC) with level of care issues. The issues that are brought up could potentially apply to waivers in the community. They will be aggressive about getting people into the waiver, but will be careful that people in the waiver meet level of care.

{Tape: 3; Side: A; Approx. Time Counter: 18.4 - 30.6}

Ms. Gervais reviewed DD eligibility requirements in other states. **Ms. Steinbeck** discussed a Subcommittee request from the 2001 session, whereby mentally ill children who were eligible for CHIP could not receive 100 percent general fund benefits. **Ms. Gervais** clarified that the Americans with Disabilities Act (ADA) classifies mental illness as a disability, and mentally ill children are considered disabled as are children with a developmental disability. **Mr. Mathews** mentioned that in DSD they run into the same problem with the Vocational Rehabilitation (VR) program. If individuals in VR do not apply to Social Security, they are already in jeopardy because there is a comparable benefit of which they have not taken advantage. They do not receive services.

{Tape: 3; Side: A; Approx. Time Counter: 30.6 - 45.2}

Moving on, **Ms. Steinbeck** reviewed the Addictive and Mental Disorders Division (AMDD) budget revision (Exhibit 3). She continued that the division is still waiting to see if the State will continue to receive the federal mental health block grant which has a maintenance of effort (MOE) equal to the average expenditures for community services over the previous two years. If the federal government enforces the MOE, the division may lose \$1.3 million for at least one year and possibly two of the next biennium. She briefed them on the remaining items of the budget revision.

Referring to Exhibit 5, **Ms. Steinbeck** reviewed the letter and said that it is being used as documentation at the federal level to propose Medicaid changes. She expressed staff concerns about the Medicaid changes: 1)it is a block grant and 2)the Subcommittee has actively used Medicaid to refinance and make general fund dollars go farther. It may be something akin to the TANF block grant. The Subcommittee would be determining who gets the Medicaid block grant when there are increases in DD, mental health services, nursing homes, and health policy. There is also a requirement for state MOE that will be inflated.

John Chappuis, Deputy Director of DPHHS, added that the block grant, as it relates to mandatory services, could move with eligibility or enrollment. For optional services, the block grant would be capped.

A letter and video cassette from Terry Preite of Spectrum Medical, Inc. was presented to the Subcommittee chair.

EXHIBIT (jhh30a06)

ADJOURNMENT

Adjournment: 10:40 A.M.

REP. EDITH CLARK, Chairman

SYDNEY TABER, Secretary

EC/ST

EXHIBIT (jhh30aad)